IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR. JUSTICE BILAL NAZKI

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 23333 of 2004

Between:

K. Sunitha, W/o K. Venkateswarlu, Convict Prisoner, r/o. A. Thimmapuram(V) Appicherla Post, Peddavaduguru(M), Anantapur District.

..... PETITIONER

AND

1 State of A.P., rep by Principal Secretary, Home Department, Secretariat, Hyderabad.
2 Superintendent, Central Prison, Cuddapah.
3 DG & IG of Prisons & Correctional Services, Chenchalguda, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ, more particularly in the nature of writ of habeas corpus declaring that action of the respondents in detaining the petitioner's husband K. venkateswarlu S/o. Venkataramudu Convict Prisoner lodged at the Central Prison, Cuddapah, beyond 15-8-2004 without releasing him under G.O.Ms.No. 190, Home (Prisons-C) Deptt., dated 7-8-2004, is arbitrary, discriminatory and illegal, and further directing the respondents to forthwith produce him before this Hon'ble Court and set him free and pass such other order or orders.

Counsel for the Petitioner: MR.K.BALAGOPAL

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.NO. 23333 OF 2004

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Husband of the petitioner i.e., K. Venkateswarlu (hereinafter referred to as "the detenu") was convicted under Section 302 IPC and sentenced to undergo life imprisonment in S.C. No. 280 of 1988 on the file of the Sessions Judge, Anantapur on 20.1.1992. He was released on parole on 20.2.1995 which was extended from time to time till 21.6.1996. He overstayed the parole for more than four years till 9.10.2000. On that date he surrendered to the Central Prison, Cuddapah. For overstaying the parole he was imposed punishment of denial of parole and furlough for four years. From 9.10.2000 the detenu is continuously in jail. The case of the petitioner is that the detenu was entitled to release from prison on 15.8.2004 in terms of G.O.Ms.No. 190, Home (Prisons-C), dt. 7.8.2004. She further submits that the detention beyond 15.8.2004 was illegal.

The learned counsel for the petitioner submits that the State Government issued G.O.Ms.No. 190, Home (Prisons-C) on 7.8.2004 by which it ordered that the convicted prisoners who have completed

7 years of actual sentence and 10 years of sentence with remissions would be entitled to remission of sentence and would be released. He further submits that 3rd respondent prepared a list of eligible prisoners and placed it before a committee constituted so that remissions were recommended to the State Government. It is submitted that the detenu was in detention from 20.1.1992 to 20.2.1995 i.e., for a period of 3 years and 1 month, then he was granted parole for a period of 1 year and 4 months i.e., from 20.2.1995 to 21.6.1996. He was also serving the sentence from 8.10.2000 to 7.8.2004 i.e., for a period of 3 years and 10 months. He further submits that in the first spell the detenu suffered imprisonment of 3 years and 1 month and in the second spell before the issuance of the G.O.Ms.No.190 he suffered actual imprisonment of 3 years and 10 months, he was on lawful parole for 1 year and 4 months and this lawful period of parole has to be counted towards the actual sentence under the G.O. and if that is counted towards the actual sentence, then the actual imprisonment of the detenu would be 8 years and 2 months. According to the learned counsel for the petitioner, the requirement of actual imprisonment was only 7 years, therefore the detenu was entitled to be released.

The State has filed counter-affidavit in which it is stated that the G.O.Ms.No. 190 would apply to those prisoners who had undergone actual sentence of 7 years and total sentence of 10 years as on 15.8.2004. The detenu being the life convict had undergone actual sentence of 7 years, 1 month and 11 days as on 15.8.2004, but he had not completed 10 years of total sentence, he had earned a total period of remission of 1 year and 8 months only. Thus the total sentence would be 8 years, 9 months and 11 days which was short by 1 year, 2 months and 19 days. As the detenu had not completed the total sentence of 10 years as on 15.8.2004, he could not be given the benefit of G.O.Ms.No.190.

In the light of these assertions, it would be necessary to have a look of the G.Os. G.O.Ms.No. 190, dt. 7.8.2004 gives guidelines for grant of remission. In para 2 (a) it states,

> "Convicted prisoners sentenced to imprisonment for life and governed by section 433-A, Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and who have undergone an actual sentence of 7 years and total sentence of 10 years as on 15.8.2004…"

The case of the petitioner is that the detenu falls under this category, he had undergone actual sentence of 7 years and had served a total sentence of 10 years with remissions as on 15.8.2004. It is admitted case of the parties that if the period for which the detenu was on parole is not counted towards the sentence, then the detenu had not completed 10 years of actual sentence as on 15.8.2004. If that period is also added to the total period of imprisonment undergone, then the detenu would be a beneficiary under the G.O.Ms.No. 190. In this connection the learned counsel for the petitioner refers to G.O.Ms.No. 3, dt. 17.1.1995 and submits that according to this G.O. under 2 (d) it is laid down,

> "All convicted prisoners with a sentence of one year and above and not covered by (a) to (c) above shall be granted a special remission of 1 month for each year of sentence awarded."

Therefore he submits that if the sentence of life is taken to be 20 years, the detenu could get a remission of 20 months under this G.O. In para-5 of this G.O. it is stated,

> "The remission granted in paragraph (2) above is in addition to the remission, normally admissible to prisoners and granted to them on the other important occasions earlier."

In the counter-affidavit it is stated that the period of parole cannot be included in the period of sentence actually served. It is submitted that under Rule 974 (1) of the A.P. Prisons Rules the period spent under parole will not count as part of sentence. It is also

submitted in the counter-affidavit that the Director General and Inspector General of Prisons and Correctional Services, Andhra Pradesh, Hyderabad by an order dt. 19.8.2004 has forfeited the remissions earned by the detenu as he had overstayed the parole and his name was removed from the roles of remission permanently. That order has never been challenged. Since there is an order passed by the competent authority forfeiting the remission which is not under challenge before us, therefore we cannot hold that the detenu was entitled to benefit under G.O.Ms.No.3, dt. 17.1.1995. He was not eligible to be released under G.O.Ms.No. 190, dt. 7.8.2004 as he had not actually undergone the total sentence of 10 years as on 15.8.2004. The remissions, if any, earned by him had been forfeited.

Therefore this writ petition is misconceived and is accordingly dismissed. No costs.

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BN J.

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GYR J.

Dt. 25.3.2005

KR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary, State of A.P., Home Department, Secretariat, Hyderabad.
2 Superintendent, Central Prison, Cuddapah.
3 DG & IG of Prisons & Correctional Services, Chenchalguda, Hyderabad.

4. 2 CCs to Advocate General, High Court Building, Hyderabad (out)

5. 2 CD copies